

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

**LOGAN & KANAWHA COAL CO., LLC,
A WEST VIRGINIA LIMITED LIABILITY COMPANY,**

PLAINTIFF,

v.

**CIVIL ACTION NO.:2:11-cv-0342
JUDGE JOSEPH R. GOODWIN**

**DETHERAGE COAL SALES, LLC
A KENTUCKY LIMITED LIABILITY COMPANY,**

DEFENDANT.

MOTION TO ORDER SERVICE BY THE U.S. MARSHALS SERVICE

Logan & Kanawha Coal Co., LLC (“L&K”), by counsel, respectfully moves the Court, pursuant to the Federal Arbitration Act (“FAA”), 9 U.S.C. § 1, *et seq.*, and Fed. R. Civ. P. 4(c)(3), to order the United States Marshals Service to serve Defendant Detherage Coal Sales, LLC (“Detherage Coal”) with L&K’s Motion to Confirm Arbitration Award and supporting documentation.

On March 16, 2011, an arbitration hearing was held in Charleston, West Virginia pursuant to the American Arbitration Association’s Rules for Commercial Arbitration. On April 21, 2011, a majority of the arbitration panel appointed by L&K and Detherage Coal concluded the arbitration by issuing an award requiring Detherage Coal to pay L&K \$2,724,719.50. To enforce the terms of the award, L&K petitioned this Court for confirmation of the award and entry of judgment thereon. L&K now requests the Court’s assistance in meeting the dictates of the FAA which requires that service be made on Defendant by a United States marshal.

The FAA mandates that when the adverse party is a nonresident of the district where the arbitration award was made, the notice and motion to confirm the arbitration award “shall be

served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.” 9 U.S.C. § 9. The arbitration award was made in the Southern District of West Virginia; Detherage Coal is a resident of the Eastern District of Kentucky. Therefore, service must be made by a marshal from the Eastern District of Kentucky.

Attempting to comply with the dictates of the FAA, counsel for L&K contacted the U.S. Marshals Office in Lexington, Kentucky on May 17, 2011 and requested that it serve the Motion to Confirm Arbitration Award on Detherage Coal Sales. The U.S. Marshals Office informed counsel for L&K that it could only serve the Motion to Confirm Arbitration Award if it received a court order requiring such service. Therefore, L&K respectfully requests that this Court exercise its power, pursuant to Rule 4 of the Federal Rules of Civil Procedure, and order that service be made by a United States marshal. See Fed. R. Civ. P. 4(c)(3) (“At the plaintiff’s request, the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court.”)

WHEREFORE, pursuant to 9 U.S.C. § 9 and Fed. R. Civ. P. 4(c)(3), L&K requests that this Court issue an order requiring the U.S. Marshals Office in the Eastern District of Kentucky to serve the attached Motion to Confirm Arbitration Award, Supplemental Motion Amending Request for Relief in Motion to Confirm Arbitration Award, Memorandum in Support of the Motion to Confirm Arbitration Award, and other exhibits attached to the Motion to Confirm Arbitration on Defendant Detherage Coal Sales, LLC through its Registered Agent, Manager, and Member William S. Detherage; 600 Conley Road; London, KY 40744.

Respectfully submitted,

LOGAN & KANAWHA COAL CO., LLC
By Counsel

/s/ Rodney A. Smith

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